

APR 11 1994

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

In the Matter of)

Computer III Remand Proceedings:)
 Bell Operating Company Safeguards)
 and Tier 1 Local Exchange Company)
 Safeguards)

CC Docket No. 90-623

Application of Open Network Architecture)
 and Nondiscrimination Safeguards to)
 GTE Corporation)

CC Docket No. 92-256

To: The Commission

COMMENTS OF PUERTO RICO TELEPHONE COMPANY

Puerto Rico Telephone Company ("PRTC"), by its attorneys and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, submits these Comments in response to the Commission's Request for Additional Comment in the above-captioned proceedings.¹

Customer proprietary network information ("CPNI") is the information obtained by a telephone company as a result of a customer's use of network services. Under the Commission's current rules, Bell Operating Companies ("BOCs") may share CPNI with their enhanced services and CPE marketing personnel without the customer's authorization if the customer has twenty lines or fewer. Request for Comment at 1. BOC enhanced services personnel

¹ Public Notice, "Additional Comment Sought on Rules Governing Telephone Companies' Use of Customer Proprietary Network Information," CC Docket Nos. 90-623 and 92-256, FCC 94-63, March 10, 1994 ("Request for Comment").

may not, however, use the CPNI of a customer with more than twenty lines without that customer's authorization. Id. Customers with twenty lines or fewer may request that their CPNI be withheld from the marketing personnel. Id. BOCs must send an annual written notice to their multi-line business customers setting forth the customer's CPNI rights. Id. Third parties must obtain prior authorization from the customer to gain access to the customer's CPNI. Id. If a BOC makes aggregated CPNI available to its enhanced services or CPE marketing personnel, it must make the CPNI available to independent enhanced services providers and CPE providers on the same terms.² Finally, BOCs must develop password/ID systems to restrict access by their enhanced services marketing personnel to their CPNI database. See GTE ONA Order at ¶ 39.

PRTC already complies with many of the requirements placed on the BOCs' use of CPNI, and it has filed its "CPNI Policy Practice Guide" with the Commission for informational purposes. PRTC is concerned, however, with the potential burden on independent telephone companies if they were required to comply with the rules to which the BOCs are subject. Specifically, PRTC believes that the requirement that enhanced marketing services personnel obtain prior authorization for access to the CPNI of customers with more than twenty lines is more onerous than necessary for independent

² Application of Open Network Architecture and Nondiscrimination Safeguards to GTE Corp., Report and Order, CC Docket No. 92-256, FCC 94-58, April 4, 1994 ("GTE ONA Order"), at ¶ 39; Furnishing of Customer Premises Equipment by the Bell Operating Telephone Companies and the Independent Telephone Companies, 2 FCC Rcd 143, 153 (1987) ("CPE Order").

telephone companies. PRTC is also opposed to the application of the annual written notice requirement to independent telephone companies.

When considering the provision of CPNI, the Commission has examined three factors: customer privacy, competitive equity, and efficiency. Request for Comment at 1. Privacy is an issue only with regard to the provision of CPNI to third parties.³ PRTC already restricts the release of CPNI to third parties. As for the issue of telephone company marketing personnel access to CPNI, the Commission has already determined that it is most efficient to permit telephone companies to give their enhanced services marketing personnel access to the CPNI of the telephone company's customers. BOC Safeguards Order, 6 FCC Rcd at 7609-10. The Commission noted that by permitting telephone companies to provide their marketing personnel with CPNI, the telephone company's ability to market enhanced services to its customers is improved. Id. This increases the customers' knowledge of the benefits of enhanced services and expands the market for these services. Id. at 7610. Moreover, telephone companies are able to provide basic and enhanced services to their customers more efficiently in part because customers are able to receive information about both the company's basic and enhanced service capabilities with one call to the telephone company. Id.

³ See Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards, 6 FCC Rcd 7571, 7611 n.159 (1991) ("BOC Safeguards Order"), pet'ns for recon. pending, pet'ns for review filed, California v. FCC, No. 92-70083 (9th Cir., filed Feb. 14, 1992).

Regarding competitive equity, the Commission has recognized that "the most valuable information in marketing enhanced services [and CPE] is obtainable from the customer and from a knowledge of the nature of the customer's business." This information is equally available to telephone companies and independent providers.⁴ The Commission also has said that most customers of enhanced services already know that the enhanced services market is competitive. Phase II Order, 2 FCC Rcd at 3094-95.

The Commission has been concerned, however, that independent enhanced service providers could not obtain CPNI without customer authorization while the enhanced services marketing personnel for BOCs had unlimited access unless the customer explicitly told the BOC to withhold the information from such personnel. These competitive concerns which caused the Commission to impose the prior authorization and written notification requirements on BOCs do not, however, support imposition of these requirements on independent telephone companies. In 1987 when the Commission decided not to impose nonstructural safeguards on the independent telephone companies, it noted that there had been no allegations of discriminatory conduct against enhanced service providers by independent telephone companies. Phase II Order, 2 FCC Rcd at 3101. In its Request for Comment, the Commission did not suggest that there were any current concerns about discriminatory conduct by independent telephone companies.

⁴ Amendment to Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry), 2 FCC Rcd 3072, 3094-95 (1987) ("Phase II Order"), recon., 3 FCC Rcd 1150 (1988), further recon., 4 FCC Rcd 5927 (1988), vacated, California v. FCC, 905 F.2d 1217 (9th Cir. 1990).

Thus, there does not appear to be record support for imposing the prior authorization and written notification requirements on independent telephone companies.

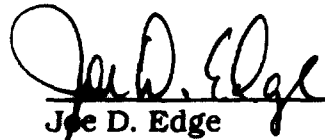
In addition, as the Commission has stated in the past, independent telephone companies serve a diverse group of areas from highly competitive urban centers to sparsely populated rural areas with one provider of enhanced services.⁵ Independent telephone companies are unlikely to be able "to affect significantly the market for enhanced services." Phase II Order, 2 FCC Rcd at 3101.

In conclusion, the Commission's three goals in regulating the provision of CPNI, privacy, competitive equity, and efficiency, do not support the imposition of the prior authorization or written notification requirement on independent telephone companies. The imposition of these requirements would be unnecessarily burdensome. Therefore, for the reasons set forth

⁵ Amendment of Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry), 104 FCC 2d 958, 1028 (1986) ("Phase I Order"), recon., 2 FCC Rcd 3035 (1987), further recon., 3 FCC Rcd 1135 (1988), second further recon., 4 FCC Rcd 5927 (1989), vacated, California v. FCC, 905 F.2d 1217 (9th Cir., 1990).

herein, the Commission should not impose the prior authorization or written notification requirements on independent telephone companies.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Joe D. Edge", is written over a horizontal line.

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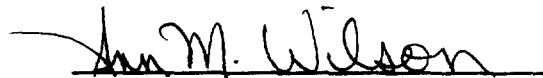
April 11, 1994

CERTIFICATE OF SERVICE

I, Ann M. Wilson, hereby certify that a copy of the foregoing Comments of Puerto Rico Telephone Company was delivered by hand this 11th day of April, 1994 to the following:

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